

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CLYDE E. MEASE, JR., )  
Plaintiff, ) C.A. No.: 06-271  
v. ) Trial By Jury Demanded  
WILMINGTON TRUST COMPANY )  
Defendant. )

COMPLAINT

THE PARTIES

1. The plaintiff, Clyde E. Mease, Jr. (hereinafter referred to as "plaintiff") is a citizen of the Commonwealth of Pennsylvania.

2. The defendant, Wilmington Trust Company, is a corporation organized and existing under the laws of the State of Delaware, whose agent for service of process is Wilmington Trust Company, 1100 N. Market Street, Rodney Square North, Corporate Administration, Wilmington, DE 19801.

JURISDICTION

3. Jurisdiction is conferred upon this Court pursuant to the provisions of 28 U.S.C. §§1331 and 1343, in that the matter in controversy arises, in part, under the laws of the United States of America.

4. This action is brought pursuant to the provisions of the "Age Discrimination Employment Act of 1967", as amended 29 U.S.C. §621 et.seq., and the provisions of 19 Del.C. §711, and the Common Law of the State of Delaware.

5. This Court has supplemental jurisdiction to hear the matters arising under the laws of the State of Delaware, pursuant to 28 U.S.C. §1367.

6. Venue in this Court is proper under the provisions of 28 U.S.C. §1391, since the defendant reside within the State of Delaware, and contractual obligations between the parties require all litigation to occur within the State of Delaware.

#### **EXHAUSTION OF REMEDIES**

7. Prior to the filing of this action, the plaintiff timely filed a charge of age discrimination with the Delaware Department of Labor (attached hereto as Exhibit No. 1), which constituted a simultaneous filing with the Equal Employment Opportunity Commission. On April 1, 2005, with the Delaware Department of Labor issuing its "Final Determination and Right to Sue Notice" on January 31, 2006 (Attached hereto as Exhibit No. 2).

#### **FACTS**

8. The plaintiff is a male citizen of the United States whose date of birth is April 4, 1950, which, on the date of the violations stated herein, indicates that he was 54 years of age.

9. The plaintiff has been employed by the defendant since December 27, 1983, most recently as a Vice-President.

10. At all times relevant, prior to the date of the plaintiff's termination, the plaintiff's work was evaluated as excellent.

11. On or about December 2, 2004, the plaintiff was terminated for what was allegedly described as violations of policies and procedures of the defendant, without

specifying and/or describing the nature of any such violations, nor with an opportunity to respond to the allegations.

12. Soon after the plaintiff's termination of employment his work was allocated among co-workers, who were either substantially younger than the plaintiff, or were less than forty (40) years of age, and who would derive a financial benefit from such transfer.

13. Subsequent to his termination, the plaintiff applied for unemployment benefits under the laws of the State of Delaware.

14. On or about March 14, 2005, the Delaware Department of Labor issued a determination that he was entitled to unemployment benefits, finding that the claimant was discharged from work without just cause or in connection with his work. Such a decision was based upon the defendant's failure to present any specific evidence supporting its claims at the hearing and refusing to identify, with any specificity, the nature of the facts supporting its claims of violations of company policy by the plaintiff, such a failure demonstrating its actions were in bad faith and intentional and willful conduct.

15. The termination of the plaintiff's employment, based upon the charge that he violated the defendant's policies and procedures was a pretext for age discrimination in that they terminated his employment at the time his age being 54 years of age, while other employees, substantially younger than the plaintiff were allocated his duties and job responsibilities.

16. As a direct and proximate result of the discriminatory conduct of the defendant, the plaintiff has lost in the past, and will lose in the future large sums of income and suffer damage to his earning capacity.

**COUNT I**

**Discrimination Under 29 U.S.C. §621 et.seq.**

17. The plaintiff incorporates herein and makes a part hereof the allegations contained in paragraphs 1 through 16.

18. The actions of the defendant in terminating the employment of the plaintiff was a result of discriminatory animus based upon the plaintiff's age, in violation of 29 U.S.C. §621 et.seq.

19. The actions of the defendant as described herein were willful.

**COUNT II**

**Discrimination Under 19 Del.C. §711**

20. The plaintiff incorporates herein and makes a part hereof the allegations contained in paragraphs 1 through 19.

21. As a direct and proximate result of the conduct of the defendant, described herein, the plaintiff has suffered, and will continue to suffer great pain and mental anguish.

22. The actions of the defendant as described herein were the result of discrimination based upon the plaintiff's age, in violation of 19 Del.C. §711, et.seq.

**COUNT III**

**Breach of the Covenant of Good Faith and Fair Dealing**

23. The plaintiff incorporates herein and makes a part hereof the allegations contained in paragraphs 1 through 22.

24. The defendant's removal of the plaintiff was arbitrary and unreasonable in an effort to prevent him from obtaining the fruits of the contractual agreement between the plaintiff and the defendant.

25. The defendant's termination of the plaintiff was based upon fraud, deceit, or misrepresentation for the purpose of preventing him from obtaining benefits due him under the contract with the defendant.

WHEREFORE, the plaintiff requests this Court to:

- a. Enter a judgment against the defendant.
- b. Enter a declaratory judgment stating that the actions of the defendant are in violation of the plaintiff's rights.
- c. Enter a judgment against the defendant for compensatory damages, including lost wages.
- d. Enter a judgment against the defendant for liquidated damages as provided by 29 U.S.C. §621 et.seq.
- e. Grant Injunctive relief to the plaintiff restoring his employment.
- f. Award the plaintiff the cost, interest, and attorney fees for this lawsuit.
- g. Award such other and further relief as this Court deems just and appropriate.

ABER, GOLDLUST, BAKER & OVER

/s/ Gary W. Aber  
GARY W. ABER (DSB #754)  
First Federal Plaza, Suite 600  
702 King Street, P.O. Box 1675  
Wilmington, DE 19899  
302-472-4900  
Attorney for Plaintiff

DATED: April 26, 2006

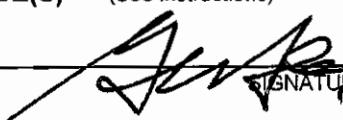
js 44

(REV. 07/89)

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## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>							
<b>CLYDE E. MEASE, JR.</b> <b>b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> _____ (EXCEPT IN U.S. PLAINTIFF CASES)		<b>WILMINGTON TRUST COMPANY,</b> COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <b>New Castle</b> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED							
<b>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</b> Gary W. Aber, Esquire, Aber, Goldlust, Baker & Over, 702 King Street, Suite 600, Wilmington, DE 19801		<b>ATTORNEYS (IF KNOWN)</b>							
<b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)							
<input type="checkbox"/> 1 U.S. Government <input checked="" type="checkbox"/> 3 Federal Question <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III)		<table border="0"> <tr> <td style="text-align: center;">           PTF      DEF            Citizen of This State      <input type="checkbox"/> 1      <input checked="" type="checkbox"/> 1         </td> <td style="text-align: center;">           PTF      DEF            Citizen of Another State      <input type="checkbox"/> 2      <input type="checkbox"/> 2         </td> <td style="text-align: center;">           PTF      DEF            Incorporated or Principal Place            Of Business in This State      <input type="checkbox"/> 4      <input checked="" type="checkbox"/> 4         </td> </tr> <tr> <td style="text-align: center;">           PTF      DEF            Citizen or Subject of a            Foreign Country      <input type="checkbox"/> 3      <input type="checkbox"/> 3         </td> <td style="text-align: center;">           PTF      DEF            Incorporated and Principal Place            Of business In Another State      <input type="checkbox"/> 5      <input type="checkbox"/> 5         </td> <td style="text-align: center;">           PTF      DEF            Foreign Nation      <input type="checkbox"/> 6      <input type="checkbox"/> 6         </td> </tr> </table>		PTF      DEF Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	PTF      DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	PTF      DEF Incorporated or Principal Place Of Business in This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4	PTF      DEF Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	PTF      DEF Incorporated and Principal Place Of business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5	PTF      DEF Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6
PTF      DEF Citizen of This State <input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1	PTF      DEF Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	PTF      DEF Incorporated or Principal Place Of Business in This State <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 4							
PTF      DEF Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	PTF      DEF Incorporated and Principal Place Of business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5	PTF      DEF Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6							
<b>IV. CAUSE OF ACTION</b> (CITE THE U.S. CIVIL STATUE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY) <b>29 U.S.C. §621 et.seq.</b>									
<b>V. NATURE OF SUIT</b> (PLACE AN X IN ONE BOX ONLY)									
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY						
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury– Med Malpractice <input type="checkbox"/> 365 Personal Injury – Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Property Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 780 Other Labor Litigation <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act <b>LABOR</b> <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS – Third Party 26 USC 7609	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/etc. <input type="checkbox"/> 480 Deportation <input type="checkbox"/> 470 Racketeer Influence and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> Other Statutory Actions					
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS							
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Equipment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Right							
<b>VI. ORIGIN</b> (PLACE AN X IN ONE BOX ONLY)									
Transferred from _____ <input type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation									
<b>VII. REQUESTED IN COMPLAINT:</b> <input type="checkbox"/> UNDER F.R.C.P 23		CLASS ACTION	DEMAND \$						
<b>VIII. RELATED CASE(S)</b> <b>IF ANY</b>		Check YES only if demanded in complaint: <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO							
DATE April 26, 2006		SIGNATURE OF ATTORNEY OF RECORD 							
UNITED STATES DISTRICT COURT									

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 1

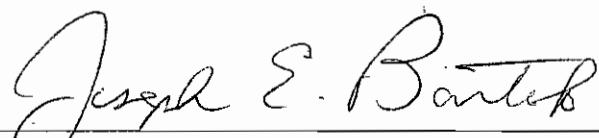
**ACKNOWLEDGMENT**  
**OF RECEIPT FOR AO FORM 85**

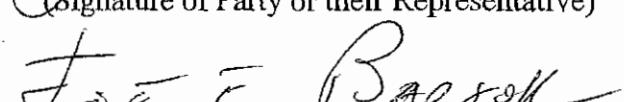
**NOTICE OF AVAILABILITY OF A**  
**UNITED STATES MAGISTRATE JUDGE**  
**TO EXERCISE JURISDICTION**

I HEREBY ACKNOWLEDGE RECEIPT OF 1 COPIES OF AO FORM 85.

APR 26 2006

(Date forms issued)

  
(Signature of Party or their Representative)

  
(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action